

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

<p>RICK ULSH; PATTI DELVALLE; and HAROLD SHEFFER, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>FARM JOURNAL, INC. D/B/A FARM JOURNAL MEDIA,</p> <p style="text-align: center;">Defendant.</p>	<p>Case No. 2:21-cv-11811-DML-APP</p> <p>Hon. David M. Lawson</p> <p>MOTION</p>
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**PLAINTIFFS' MOTION FOR ENTRY OF
[PROPOSED] ORDER RE: SUBSTITUTION OF PLAINTIFFS**

Pursuant to the Court's instructions at the status conference held in this matter on June 14, 2022, Plaintiffs respectfully request the Court's entry of the proposed order attached hereto as **Exhibit A**.

On August 5, 2021, Plaintiff Tia Hall initiated this action by filing a Class Action Complaint. (ECF No. 1.)

On June 10, 2022, Plaintiffs filed a First Amended Complaint (ECF No. 32 (the "FAC")) with Defendant's written consent pursuant to Federal Rule of Civil Procedure 15(a)(2). *See Exhibit B* hereto (correspondence between counsel in which Defendant provided its written consent to the filing of the FAC pursuant to

Fed. R. Civ. P. 15(a)(2)). The FAC substitutes Plaintiffs Rick Ulsh, Patti DelValle, and Harold Sheffer in place of Plaintiff Tia Hall.

On June 14, 2022, the parties appeared for a status conference at which the Court instructed Plaintiffs to submit a proposed order dismissing plaintiff Hall's claim and indicating that the new plaintiffs (Ulsh, DelValle, and Sheffer) were being substituted into the case in place of the original plaintiff (Hall).

As the Court instructed, the proposed order prepared by Plaintiffs' counsel dismisses Hall's claim without prejudice, indicates that Ulsh, DelValle, and Sheffer have been substituted into the case in place of Hall, and orders Defendant to answer or otherwise respond to the FAC on or before July 11, 2022 (the date agreed to by the parties when Defendant consented to the filing of the FAC, *see* **Ex. B** hereto (correspondence reflecting agreement)).

On June 21, 2022, in response to an e-mail from Defendant's counsel requesting Plaintiffs' draft of the "order fixing the substitution issue" (pursuant to the Court's instructions at the status conference), Plaintiffs' counsel sent the attached proposed order (**Ex. A**) to Defendant's counsel in the hopes that Defendant would agree to jointly submit the order to the Court. Plaintiffs' counsel did not believe there was anything controversial about the proposed order as drafted, but nonetheless invited Defendant's counsel to propose any revisions to the order that his client felt were appropriate. *See* **Exhibit C** hereto at 8-9.

Over the ensuing six days, Defendant’s counsel has stated that Defendant does not consent to the submission of the attached proposed order, but has refused to make any proposed revisions to the order or articulate any reasons why Defendant is unhappy with the order as drafted. Instead, Defendant’s counsel has stated that Defendant believes “a call to chambers” is necessary, without explaining why a call to chambers is necessary or appropriate in light of the attached proposed order that Plaintiffs’ counsel provided to Defendant’s counsel – a proposed order that accomplishes exactly what the Court envisioned at the hearing, as Defendant’s own counsel acknowledged in his e-mail to Plaintiffs’ counsel on June 21, 2022 (*see* Ex. C at 9 (requesting that Plaintiffs’ counsel “prepare an order fixing the substitution issue”))). A copy of the full meet-and-confer correspondence between the parties concerning the proposed order is attached hereto as **Exhibit C**.

Plaintiffs’ counsel believes that the attached proposed order is exactly what the Court ordered the parties to prepare concerning the substitution issue, and still today has no idea why Defendant is unsatisfied with the proposed order, why its counsel has refused to propose any revisions to the order, or why Defendant’s counsel thinks a call to chambers is necessary to resolve this exceedingly straightforward issue.

As evidenced by **Exhibit C**—which demonstrates an extensive but frustrating meet and confer process in which Defendant refused to communicate any objection

to Plaintiffs even though Defendant had consented to the filing of the amended complaint—Plaintiffs, in compliance with L.R. 7.1(a)(2), have been unable to obtain concurrence from counsel for Defendant in the relief sought here.

As such, the present Motion is being filed, pursuant to the direction provided by Ms. Pinkowski (**Exhibit D**), as Plaintiffs were unable to obtain Defendant's concurrence and are thus unable to file this proposed order as a stipulated order, per L.R. 7.1(a)(1).

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully request that the Court enter the proposed order attached hereto as **Exhibit A** (and Plaintiffs will submit this proposed order via Utilities upon the direction of the Court).

Dated: June 27, 2022

Respectfully submitted,

By: /s/ E. Powell Miller
One of Plaintiff's Attorneys

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Proposed Class Counsel

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FOR THE EASTERN DISTRICT OF MICHIGAN**

<p>RICK ULSH; PATTI DELVALLE; and HAROLD SHEFFER, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>FARM JOURNAL, INC. D/B/A FARM JOURNAL MEDIA,</p> <p style="text-align: center;">Defendant.</p>	<p>Case No. 2:21-cv-11811-DML-APP</p> <p>Hon. David M. Lawson</p> <p>BRIEF</p>
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**BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR ENTRY OF
[PROPOSED] ORDER RE: SUBSTITUTION OF PLAINTIFFS**

For Plaintiffs' Brief in support of Plaintiffs' Motion for Entry of [Proposed] Order Re: Substitution of Plaintiffs, Plaintiffs rely on the contents of their Motion including the exhibits attached thereto.

WHEREFORE, Plaintiffs respectfully request that the Court enter the proposed order attached to Plaintiffs' Motion as **Exhibit A**.

Dated: June 27, 2022

Respectfully submitted,

By: /s/ E. Powell Miller
One of Plaintiff's Attorneys

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Proposed Class Counsel

CERTIFICATE OF SERVICE

I, E. Powell Miller, an attorney, hereby certify that on June 27, 2022, I served the above and foregoing *Plaintiff's Motion for Entry of Proposed Order Re: Substitution of Plaintiffs* on all counsel of record by filing it electronically with the Clerk of the Court using the CM/ECF filing system.

/s E. Powell Miller

E. Powell Miller